

December 8, 2003

Toni Herkert, Shoreland Management Team Leader
DNR WT/2
Box 7921
Madison WI 53707-0161

RE: Proposed changes to NR 115

Dear Ms. Herkert:

The Adams County Land and Water Conservation Committee would like to go on record with the Department of Natural Resources that they are not in favor of any of the proposed changes that will modify the existing NR 115 Wisconsin Shoreland Management Program rules.

/s/

William Graumann, chair
Richard Colby
Charles Hill
Joyce Kirsenlohr
Marcella Hardin

XVI. DOCUMENTATION FOR THE PUBLIC RECORD

Comments from the listening sessions will be accepted until December 31, 2003. Comments can be emailed to Toni Herkert, Shoreland Management Team Leader at Toni.Herkert@dnr.state.wi.us or comments can be mailed to her at DNR WT/2, Box 7921, Madison, WI 53707-7921. If you have questions, Toni can be contacted at (608) 266-0161. More detailed information on the Shoreland Management Program revision is available at: www.dnr.state.wi.us/org/water/wm/dsfm/shore/news.htm

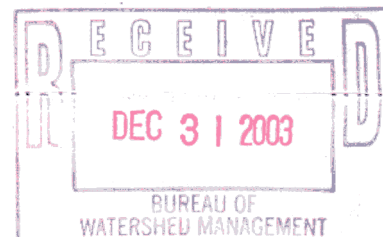
If you would like your comments to be part of the public record for the NR115 rule revision, please, at a minimum, provide your name. The remaining information is voluntary. Please print legibly.

Date: 12-30-03
Name: Ross Barkhoff
Address: W8722 Cty Rd S
Hortonville, WI 54944
Phone: 920 757 5690
Email: _____

Would you like to receive email updates about the status of the NR 115 revision process?

☐ Yes ☒ No

I like Fishing on rafts and would like it exempt from NR115 because it is a heritage and tradition.



Wagner, Carmen (DNR)

From: RHDreher@aol.com

Sent: Monday, January 05, 2004 7:51 AM

To: Herket, Toni

Subject: NR 115 revision comments

Toni-

Please accept the attached comments and suggestions regarding the NR 115 revisions. Our board was unable to get together over the holidays, and as a result we are a few days tardy.

Bayfield County Lakes Forum members include all of the organized lake groups in th the county and other individuals who are interested in lake issues. We have much to protect-our lakes include some of the least developed and most pristine in the state. Bayfield County has had a zoning ordinance in place since 1971 which offers greater protections to our lakes and shorelines than the NR 115 minimums. The recent, 2000-2001, revisions incorporated many of the provisions proposed for NR 115.

Thanks for the opportunity to give input.

Roger Dreher
President, Bayfield County Lakes Forum

03/22/2004

NR 115 Listening Session Proposal-BCLF Position 12.12.03

The following comments address the listening session proposal released on October 28, 2003.

Bayfield County Lakes Forum board of directors discussed the proposals at some length and agree that the position summarized below would continue to protect the natural, recreational and economic values of Wisconsin lakes and shorelands.

There are many positive things in the recommendations. In looking at the various proposals, it is important to consider the interrelationships between them. This is especially the case with the non conforming structure and buffer sections.

There are many court decisions which apply to elements of the proposed rules and which must be reflected in the rules. A thorough review by the Office of the Attorney General should be conducted prior to submitting a draft rule to the Natural Resources Board.

I. Shoreland buffers

Buffer Depth

Proposal A, 35 foot deep primary buffer, 40 foot deep secondary buffer, 75 foot setback from OHWM.

Increasing the primary buffer to 50 feet has significant impacts on expansion of non conforming structures. Stringently enforce the rules on vegetative cover.

Viewing Access Corridor

Size of VAC for Single Family and Duplex Residential Properties:

Proposal A, 30% of frontage or 30 feet maximum width whichever is less.

This would be less restrictive than the current “no clear cut” rule as it allows all vegetation except grass or some kind of ground cover to be removed.

Add provisions governing seasonal placement and storage of watercraft and moveable recreational equipment. Define the use, location and dimensional limitations.

II. Ordinary High Water Mark (OHWM) Setbacks

Proposal A, boathouses should be setback a minimum of 75 feet from OHWM.

Allow boat shelters in the secondary buffer as an alternative to lifts or hoists installed on the lake or river bed. The boat lifts are sources of pollution and destroy the natural appearance of shorelines. Define the dimensions and uses of such structures.

III. Nonconforming Structures

All of the applicable sections must be considered together: buffers, impervious surfaces, straddling, and reconstruction definitions interrelate.

Minimum Size to be Eligible for Expansion

Proposal A, 750 sq. ft. or the county general zoning minimum building size whichever is less.

The smaller structures are usually the oldest and easiest to move and the idea of tying this to the county general zoning rule is a good one.

Total Size of Structure

Proposal A, 1500 sq. ft. total living space.

This is OK only if the two following Proposal A provisions are accepted. Think about what you can do with a structure which is 36 feet from the OHWM. The wrong combination leads to very large structures within 36 feet of the water.

Structures in More than One Buffer Zone

Proposal A, subject to the provisions of the most restrictive zone.

If Proposal B is accepted and Proposal B on total size is accepted, a 750 sq. ft. structure at 15 feet from the OHWM, the back of which is 35.1 feet from the OHWM can be expanded to 3250 sq. ft. (750 inside 35 feet, 2500 between 35 and 75 feet), plus an unlimited amount beyond 75 feet. This provides virtually no incentive to remove the small building and erect a new structure beyond 75 feet and will result in extremely large structures maintained very close to the OHWM.

Major reconstruction

Proposal A, 25% of structural members or 50% of linear perimeter walls.

The definition of structural members should not include the foundation as someone will claim (and has already in a Bayfield County case) that every cement block is a structural element.

Proposal A will allow the building to be completely reconstructed over a period of time by doing half of the walls in one project and the other half in another. The reconstruction or replacement limit must apply over the life of the structure to prevent the complete reconstruction scenario.

IV. Minimum Lot Size-Single Family Homes, Duplexes and Commercial Development

Minimum Size for New Lots

Proposal A, 100 ft. width and 20000 sq. ft

With improvements to septic systems and required periodic maintenance and inspections as required by Comm 83, septic systems on new lots pose a minor threat to the waters. Smaller lots mean less disturbed shore line vegetation in the buffer zone, greater impervious surface areas and associated runoff and transport of nutrients to the water.

The regulation should clearly state that smaller lots platted prior to the effective date of the revision are grandfathered and that building is allowed on any lot if required setbacks are met.

Minimum Buildable Area

Proposal A, 5000 square feet of buildable area.

This prevents platting lots which can't accommodate the buildings, septic systems etc.

A better alternative would be a minimum area of 2500 square feet which meets all applicable setbacks. Lots with inadequate buildable area get permits through the variance process. Setting limits will reduce the need for variances.

Keyhole access

The committee didn't include a recommendation on keyholing. The rule should limit the number of back lots which can have deeded access through a keyhole lot to four and require a minimum of 50 additional feet of frontage for each lot in excess of two.

V. Minimum Lot Size-Multiple Family Developments, Hotels, Motels, and Resorts

Favor the proposal

If properly developed, impacts on the water and shoreland area will be significantly diminished.

VI. Lot Size Reduction for Conservation Development

Generally favor the proposal.

There must be a provision for additional frontage for all dwellings, including those on back lots. It should be 50 feet per lot for detached dwelling units.

VII. OHWM Setback Reductions and Non Conforming Lot Provisions

Generally favor the proposal. Options Step 3 is preferred.

Setback averaging should be applied only when the other forms of relief do not achieve the objective.

The definition of “abutting” must be clarified to deal with situations where a lot is bisected by roads creating a non conforming shoreland lot and a non conforming back lot.

The proposal should address setback reductions from wetlands.

VIII. Filling, Grading, Lagooning, Dredging, Ditching and Excavating

Favor the proposal.

Add provisions for controlling erosion and runoff during clearing, grading and construction.

IX Impervious Surface Provisions

Proposal A

2500 sq. ft. or 20% of lot area, whichever is less unless drainage BMP’s are implemented.

Provision should be modified to apply to that portion of the lot within 150 feet of a waterbody.

This is generous as the scientific data shows increased runoff starting at about 10% of the lot area. By implementing the drainage BMP’s the actual limits may be much higher.

There must be a regulation which defines BMP’s or the specific requirements need to be included in NR 115.

X. Mitigation Provisions

Favor the proposal.

To gain the benefits of mitigation, there must be strict enforcement of the rules.

XI. Agriculture

Favor the proposal.

XII. Forestry

Favor the proposal.

The provision must apply only to areas outside the primary and secondary buffer to prevent claims that wooded shoreland is exempt from NR 115.

XIII. Recreational Areas Including Campgrounds, Public Access Sites and Marinas

Limits on camping unit stays

Proposal A, camping units limited to a 30 day stay.

Allowing three or six month occupation creates a category of seasonal residence which does not pay property taxes. Soon these sites are made more and more permanent with the addition of decks, roofs, patios and the like.

We strongly support the provisions for buffers, VAC, OHWM setbacks and vegetation and impervious surfaces which are discussed in the proposal.

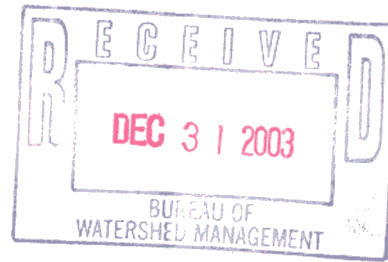
XIV. Sanitary Regulations

The Department of Commerce must take action to assure that all counties are fully implementing the provisions of Comm 83 and other applicable administrative rules and statutes.

DNR should retain enforcement authority with regard to POWTS located in the shoreland zone.

155 West Main Street, 302
Columbus OH 43215
December 27, 2003

Toni Herkert
Wisconsin DNR WT/2
Box 7921
Madison, WI 53707-7921



Dear Ms. Herkert;

I am writing this in regard to the proposed rule changes for home improvements and changes to existing structures for "nonconforming" structures near Wisconsin lakes. These structures were, of course, built before the various counties decided to change the rules and decide they were "nonconforming."

The proposed changes as outlined on the Wis. DNR web page are a welcome change to the existing zoning laws which are draconian. However, I think that a hard and fast rule concerning changes to existing structures based on the distance from the high water mark misses the point. Please examine the two photos I am enclosing which were taken from a boat that was approximately an equal distance from shore.

Photo number 1, shows only a small portion of the roof line of our house which is one of the original buildings on Lake Owen. One corner of the front wall is about 25 feet from the high water mark. Although you cannot see it because of the dense tree foliage, the land between the house and shore has been left in its natural state. Many new White and Norway pine and Hemlock emerge each year around the house.

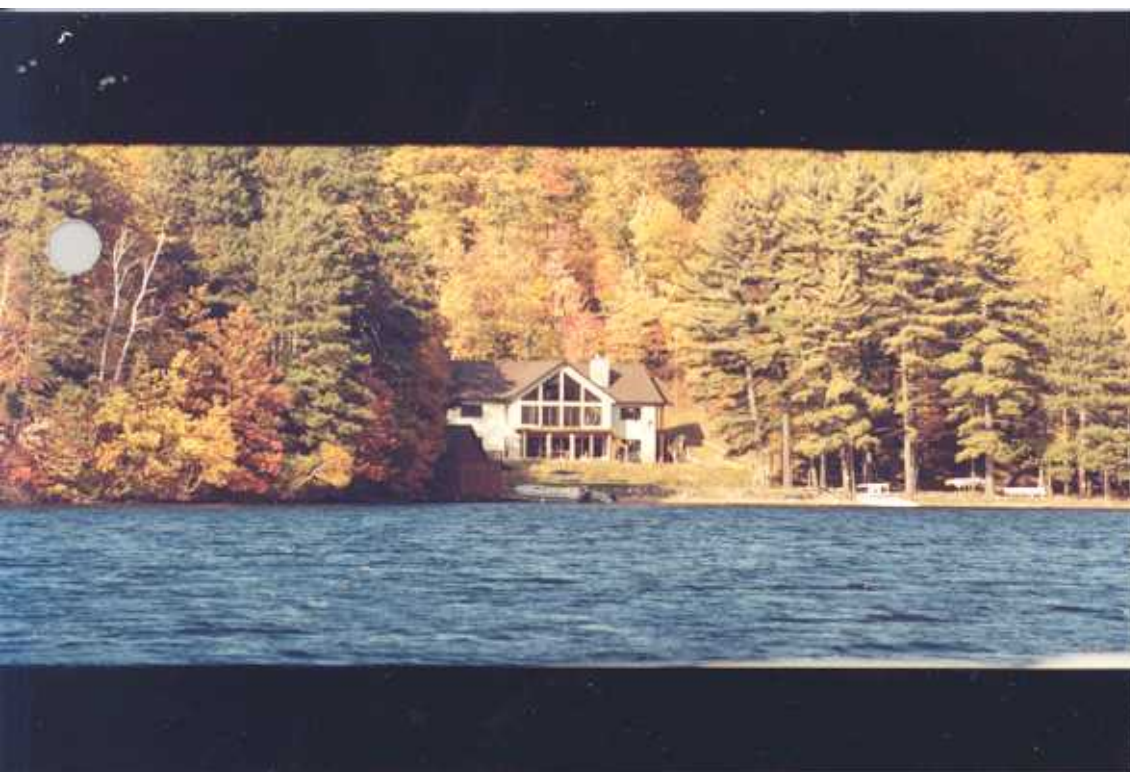
Photo number 2 is a new home and we assume the setback is 75 feet from the high water mark.

It seems to us that the number of feet between the lake and a home does nothing to guarantee the beauty or water quality of a lake. We have no idea why the zoning laws continue to make this a primary objective for home improvements or changes to existing structures. We think it should be decided on a case by case basis or this provision should be eliminated..

Sincerely,

Dorothy Behling, Ph.D.

Orlando Behling, Ph.D.



DATE: December 18, 2003

TO: Richard Wedepohl - WT/2
Toni Herkert - WT/2

FROM: Mark Beilfuss - Conservation Warden New London Area
Dan Helf - Wolf River Water Team Leader

SUBJECT: Corrections and Additions to Proposed NR 115



We recently attended a listening session concerning draft language for changes to chapter NR 115 Wisconsin Administrative Code. We noted that a potential conflict would arise with winter storage/placement of Wolf River Fishing Rafts as a result of proposed changes to ch. NR 115 WAC. We also have a concern with loopholes in current laws that allow new structures to be placed on the shorelines. We would like to propose some solutions to be incorporated into ch. NR 115 WAC to improve this issue.

First, the Wolf River Fishing Raft issue. Fishing rafts have a historical and cultural foundation on the Wolf River and its tributaries. WR rafts have been part of this area's history and culture since the 1930's or perhaps sooner. These structures are traditionally used during the walleye spring fish spawning runs but may also serve as other fishing access opportunities throughout the summer months. As such, WR rafts have had a large amount of public legislative involvement that is recognized by section 30.126, Wisconsin Statute and NR 324 WAC. Since 1998, we have worked with raft owners, county & township officials to effect changes to the regulation of WR rafts. This work resulted in significant changes to ch. NR 324, WAC that supported the local units of government's adoption of regulatory ordinances. One of the issues we resolved within this group was the removal of WR rafts to above the OHWM during the period they were not being used as a fishing raft. This period of time is normally between November 1 to March 31 annually but could vary depending on the owner's usage. There were several reasons for agreeing on the OHWM as our reference mark, some of which include, it is easily identified by the raft owners and officials, allows for easier high water spring launching and they do not cause litter and abandonment problems.

It is our interpretation of proposed language in the revised ch. NR 115 WAC, which indicates that a structure such as a fishing raft would need to be, removed at least 75 feet back of the OHWM. Clearly, that would be in conflict of ch. NR 324 and s. 30.126 Stats. In addition, this would be an unreasonable and unnecessary burden on raft fishermen because many rafts are stored adjacent to property that is not conducive to a 75-foot setback. We propose a solution that would include Wolf River fishing rafts under the list of exceptions in the proposal; section 2 titled "Ordinary High Water Mark (OHWM) Setbacks". Also parallel language to open sided structures could be added stating fishing rafts allowed under s. 30.126 Wis. Stats. and ch. NR 324 WAC will continue to be allowed and the statutory and administrative rule provisions allowing fishing rafts are not affected by any changes to ch. NR 115, WAC. Code.

The other more complicated problems are loopholes in chs. NR 115 and NR 116 WAC that do not address mobile units such as trailers, mobile homes, busses (all on wheels) and former house boats parked on shore. These mobile units and old boats can and do serve as permanent habitable structures on shoreland areas within the setback zone and or in the floodway. Many times cantilevered decks, piers, picnic tables and yard work follow on-site. The argument is that these are not habitable structures but

rather mobile campers or boats. The new ch. NR 115 WAC proposes to address established campgrounds but not individual properties. A solution could be to define mobile homes, campers other than tents, ice fishing shacks and the like, and any boat with an enclosed structure being stored on shore to be considered a structure and must be removed out of the setback zone and flood way for 6 months each year or not allowed. Old structures such as these would need to be grandfathered as there are school buses, mobile homes and parked boats that have been on the shoreline for some time and/or enforcement action was not available in the past. We accept that these grandfathered structures are with us and will stay with us but the real and actual danger is in the continued new additions of these type structures on the shores of our waters.

Local Dept. of Natural Resources employees, Waupaca and Outagamie Zoning enforcement personnel have indicated they support the fishing raft exception as described. In addition, they also agree there have been enforcement problems with the above mentioned loopholes. Enclosed is a letter from Outagamie County Zoning Administrator Timothy Roach that supports a revised NR 115 as well and an exception for Wolf River Rafts. It is our understanding that the Waupaca County Zoning Office will also independently send a letter of support.

We believe that a statewide standard to address these issues is necessary because it has statewide implications rather than of a local nature. We feel that the afore mentioned exceptions need to be incorporated into a revised ch. NR 115 WAC.

cc:

~~Ron Kazmierczak - NER~~

Charles Verhoeven - NER

Kristi Rogers - NER

Byron Goetsch - NER

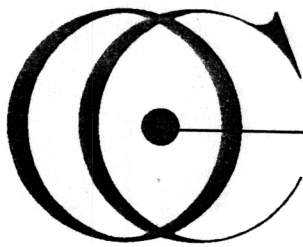
Carl Mesman - Wautoma

Mike Russo - Walnut St., NER

Jon Brand - Walnut St., NER

Scott Koehnke - Shawano

Michael Dressen - Shawano



OUTAGAMIE COUNTY

410 S. WALNUT ST. APPLETON, WISCONSIN 54911

PLANNING AND ZONING ADMINISTRATION

ADMINISTRATION BUILDING LEVEL 3
TELEPHONE (920) 832-5255 FAX (920) 832-4770

December 16, 2003

Mr. Dan Helf
DNR
1125 Military Road
Green Bay, WI 54307-0448

RE: NR115 Update

Dear Dan:

This is a follow-up letter to our telephone conversation on December 11, 2003. We discussed the proposed changes to NR115.

I do support the proposed changes; however I believe there should be an exception built into the language about the fishing rafts on the Wolf River. A great amount of effort went into the changes made to Chapter NR324 Wisconsin Administrative Code – Fishing Rafts in Navigable Waters.

As you know, the Wolf River from Shawano down stream to Lake Poygan has special consideration, which allows fishing rafts to be placed water ward of the ordinary high water mark (OHWM) during the year. The raft owners, which many times are also riparians, are allowed to locate the fishing rafts landward of the OHWM when they are not in the river. This was allowed for storage purposes only. This is in conflict with the proposed NR115, which requires a 75 foot setback from the OHWM, for all structures.

Please forward my support for NR324 – fishing raft consideration to the NR 15 re-write committee.

Thank you.

Timothy P. Roach
Sincerely,

Timothy P. Roach
Zoning Administrator

cc: Mark Beilfuss, DNR
Kristy Rodgers, DNR

State of Wisconsin
CORRESPONDENCE/MEMORANDUM

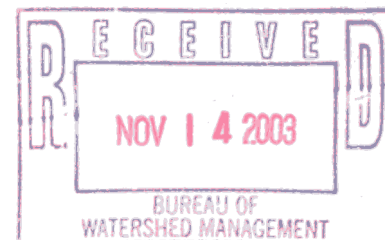
FILE REF:

DATE: Nov. 10, 2003
TO: Toni Herkert - Bureau of Watershed Management
FROM: Kris Belling Wildlife Biologist, Baldwin
SUBJECT: NR 115 comments

Attached are a few comments and suggestions on the NR 115 proposals. I am pleased to see that wider vegetative buffers are proposed, and that provisions are made to allow the appropriate habitat management (including grassland management) in the shoreland area.

If you would like to clarify any of my comments, you can reach me at 715-684-2914 ext. 112 or by e-mail.

Thanks for the chance to comment!



I. SHORELAND BUFFERS

CURRENT LAW: In the strip of land 35 feet wide inland from OHWM, no more than 30 feet in any 100 feet shall be clear-cut. In shoreland areas more than 35 feet inland, trees and shrub cutting shall be governed by consideration of the effect on water quality and sound forestry and soil conservation practices. These regulations do not apply to the removal of dead, diseased or dying trees or shrubs.

What if existing vegetation is not native? I presume "native" vegetation is only required for any new plantings. Would it be best to remove the word "native" here and stress it in provisions below?

PROPOSAL: Primary Buffer. A buffer of native shoreland vegetation, parallel to the OHWM, and extending inland from the OHWM. Within the primary buffer, the following provisions apply:

One viewing and access corridor (VAC) to the water allowed for each property.

Vegetation removal prohibited, except for control of exotic or invasive species, removal of diseased vegetation, removal of trees or shrubs severely damaged by high winds, or because of an imminent safety hazard.

Any vegetation removal requires replacement with native vegetation except for selective removal in VAC. *and except that exotic or invasive trees or shrubs that are removed do not need to be replaced by other trees or shrubs.*

Any new vegetation that is planted must be native to Wisconsin (or native to something else? *must define "native"*)

EXCEPTIONS: See Section XII. Forestry and Habitat (and other sections?)

Secondary Buffer. A vegetated buffer extending inland from the primary buffer to the minimum OHWM setback line. Within the secondary buffer, the following provisions apply:

Maintenance of a vegetated buffer required. Turf, groundcovers, or native ground layer vegetation would qualify as a vegetated buffer.

Removal of trees and shrubs allowed.

Buffer Depth:

Proposal A

50-foot primary buffer + 25 foot secondary buffer = 75-foot OHWM setback

Proposal B

35-foot primary buffer + 40 foot secondary buffer = 75-foot OHWM setback

Viewing Access Corridor (VAC). A corridor extending through the primary buffer, connecting the secondary buffer to the waterfront. Within the VAC, the following provisions apply:

Maintenance of vegetation required. Turf, groundcovers, or native ground layer vegetation would qualify.

↳ does it really need to be turfgrass height to facilitate viewing?

★ VAC Proposal A preferred

preferred ★

Removal of trees and shrubs allowed if the VAC is not naturally occurring.

XII. FORESTRY and HABITAT *(please acknowledge grassland to be equally important as trees!!)*

CURRENT LAW: There are no specific provisions in the current rule that would address forestry as a different use within the shoreland zone.

and habitat management

PROPOSAL:

Forest Management Activities:

Forest management activities are exempt from NR115 buffer standards if Wisconsin's voluntary "Wisconsin's Forestry Best Management Practices for Water Quality" (PUB FR-093 2003) are applied.

Special Areas Management Activities:

Special area management activities are exempt from NR115 buffer standards if consistent with a department approved management plan and the plan is referenced or filed with the county as specified in the ordinance, or if consistent with a management plan developed by a professional natural resource manager and the plan is filed with the county as specified in the ordinance.

Special area management occurring on lands owned or eased by the Dept. or the USFWS do not require a plan to be filed with the county.

DEFINITIONS

"Forest Management Activities" means actions taken to establish, maintain or enhance forest land including, but not limited to, planting trees, thinning and trimming trees, and harvesting timber and other forest products.

"Forest Land" means any area on which trees exist, standing or fallen, alive or dead, that are primarily grown because they are valuable for forest products, watershed or wildlife protection or non-residential recreational uses in contrast to areas where shade or ornamental trees are grown primarily because they are valuable for landscape, aesthetic, agricultural or similar purposes. Note: A parcel of land need not be designated as managed forest land under ss. 77.80 to 77.91, Stats., or be enrolled in any other forest management program to be considered "forest land."

"Special Area Management Activities" means actions taken to establish, maintain, ~~or~~ enhance or restore native plant communities or fish or wildlife habitat including, but not limited to, forest management activities, prairie/restoration, wetland restoration and removal of exotic species.

grassland

invasive or

Wagner, Carmen (DNR)

From: Braun, Bob [BBraun@co.winnebago.wi.us]
Sent: Tuesday, December 23, 2003 10:14 AM
To: Herkert, Toni
Subject: NR 115 comments

Toni:

I have the following comments concerning the NR 15 update. I am following the long form comment sheet, so please bear with the length of this. I have mailed the short form, but I have additional comments I wished to make. Comments are as follows:

1. shoreland buffers

the 50' primary plus the 25' secondary is close to what we have now and would not allow structures as close as 35'. The change to allowing things as close as 35' would be too drastic of a change and would not protect the resource in my opinion.

2. OHWM setbacks

In general, the lists of items in 2a - 2f are acceptable provided reasonable size limits are established. All of the uses generally allow use of the shoreland area. For the most part the listed uses are unobtrusive enough and would not need additional requirements pertaining to size, color, etc.

Boathouses should only be allowed within the 75' setback area. Boats are water dependent, and to require a boathouse to be located beyond the 75' setback area now leads to concrete ramps for access, etc.. a limitation of one boathouse per principal residence, a size limitation (we use 500 square feet), and prohibiting a hoist and boathouse all would allow reasonable use of the property without being overly restrictive.

3. nonconforming structures

the current 50% rule should remain as is. It is workable, understandable, and allows for "reasonable local differences in assessments".

If the proposed changes are made, utilizing the "major construction" definitions, we - the issuing authorities will have an increasingly difficult time monitoring construction. We will need to count studs and rafters in order to determine what is being done. The definition utilizing the term "all or virtually all" is meaningless and far too subjective.

The 50% rule is not hard to work with. If it has any real deficiency, it is that the value submitted with the applications are suspect. A set of standards by "region" would perhaps eliminate that. We have found that the majority of people are reasonably honest in their applications and do not grossly distort values.

Mitigation should not be required, or an option. It again becomes subjective and would increase our workload.

4. Lot size

no concerns

5. lot size - multi family, etc.

not an issue in our county.

6. lot size for conservation development

should be allowed, but our experience has been that said provisions won't be used because people in this area prefer the standard subdivision layouts. We have had this option available since 1979 with no takers.

Wetlands and floodway should be excluded from calculations.

7. nonconforming lot provisions

I would support requirement to have all contiguous land "merged" at time of building as long as the merged parcel is no larger than the minimum required, or the remainder of the owned land is not less than the minimum required.

Do not agree with 7g at all.

I strongly support 7h with a minimum of 50' setback from OHWM. This has been workable in our county.

8. filling

no concerns

9. impervious

may increase workload of counties

10. mitigation

do not support. Becomes subjective. Requiring vegetative practices would probably be more beneficial.

11, 12, 13, 14

no specific concerns or issues

Bob Braun
Winnebago County Zoning Administrator
bbraun@co.winnebago.wi.us